THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No. 1856 of 2005

Date: .08.2005

Between:

1) G.C. Reddapa Reddy, s/o. G.Gangi Reddy,

32 years, casual labourer, Telegraph Office,

Cuddapah, r/o. Cuddapah & others …Petitioners

And

1) The Union of India, rep. by the Secretary

to Government, Department of Telecommunications,

Ministry of Communications, New Delhi & 3 others…Respondents

ORDER:

Challenging the letter No. BSNL/CDP.LC/OA No.601/ 2003/03-04/14, dated 29.06.2004 issued by the fourth respondent and to declare that

petitioners are entitled for grant of temporary status and regularisation with all consequential benefits, the Writ Petition is filed.

It is the case of the petitioners that they were engaged as casual labourers in Telecom Department from the years 1992 to 1996 and are performing duties of regular Class-IV employees. Their cases were not considered for temporary status and regularisation though they completed more than 240 days of service, on the ground that they were engaged after the cut off date viz. 22.06.1998. The petitioners and others filed O.A. No.471 of 1998 before the Central Administrative Tribunal, Hyderabad bench and as per directions therein, the petitioners were continued in service without any break. The first respondent agreed to extend benefit of granting temporary status and regularisation to Casual Labourers working as on 01.08.1998. But, the names of the petitioners were not furnished therefor though they are entitled. Other casual labourers working in other divisions obtained orders in O.A. Nos. 1625 of 2000 and 1424 of 2001 for their conversion into full time casual labourers and thereafter for grant of temporary status, and they were accordingly granted temporary status. For not extending such status to the petitioners, they filed O.A. No.601 of 2003, which was disposed of on 31.12.2003 directing the second respondent to consider their cases for conversion as full time casual labourers and regularisation of services in terms of the instructions issued from time to time within a period of four months and the order became final. Since the respondents did not initiate necessary steps in implementation of the order of the Tribunal, petitioners filed Contempt Petition. But, during pendency of the contempt, the impugned letter dt 29.06.2004 was issued by the fourth respondent rejecting the cases of petitioners for conversion into full time casual labourers and subsequent regularisation, upon which the contempt was closed by the Tribunal, which is illegal. Hence, the Writ Petition.

Counter affidavit filed by the respondents 2 to 4 denied the averments made in the affidavit of the petitioner and added that the Writ Petition is misconceived as the cause of action in case of each petitioner is different, and there is no employer-employee relationship between the petitioners and respondents. There is a ban on engagement of casual labour as per the circulars of the department and the amended provisions of P & T Manual Vol.X withdrew all powers of engagement of casual labour. The regularisation is regulated as per orders dated 29.09.2000. The petitioners were engaged on hourly basis without a letter of appointment. As per the directions of the Tribunal, the petitioners are continuing on hourly payment of wages. The scheme formulated on 7.11.1989 was extended to the casual labour currently employed on 1.10.1989 and left out cases have been considered thereafter, but sno further scheme was brought into force. The petitioners are not covered by the scheme formulated in letter no.269-10/89, STN dated 07.11.1989. Hence, the Writ Petition is not maintainable and is liable to be dismissed.

The learned counsel for the petitioners contended that the petitioners were engaged as casual labourers on different dates between 01.01.1992 to 31.12.1996; that they rendered more than 240 days of service, still they have not been conferred with any temporary status and regularisation on the ground that they were engaged after cut off date on 22.06.1998; as per the proceedings of the Department of Telecom dated 29.09.2000, temporary status was not given and the department is not acted upon though the cases of the petitioners fall under the left over categories; that similarly situated employees were given temporary status as per the order of the Central Administrative Tribunal, Hyderabad bench in O.A. No.1625 of 2000; that the petitioners also filed O.A. No.601 of 2003 before the Tribunal praying for the relief of temporary status and the Tribunal vide its order dated 31.12.2003, directed the second respondent to consider his case. He further contended that all the petitioners were in service as on

01.08.1998 and rendered more than 240 days of service as on that date. Therefore, he prays to allow the Writ Petition.

On the other hand, the learned standing counsel appearing for the respondents contended that names of petitioners have not been included in the scheme and the services of the petitioners were terminated as on 01.01.1998; but, in pursuance of the orders of the Tribunal dated 10.08.1998, the petitioners were re-engaged. He further contended that there is no scheme in Department of Telecom or in BSNL for conversion of contract labourers into full time labourers and subsequent regularisation. Therefore, he prays to dismiss the Writ Petition.

Learned counsel for the petitioner placed strong reliance on a Division Bench judgment of this Court in *Senior Deputy Director General (Electrical), Corporate Office, BSNL, New Delhi & others v. M.Subbarao & others* wherein it is held:

> (Para 12) "In a judgment of the Apex Court as relied on by the learned single Judge, reported in Union of India v. Mohanpal ((2002) 4 SCC 573), it is held that the scheme of 1993 provides that a casual labour who has completed 240 days of working days in a year would be entitled to temporary status. The conferment of temporary status is to be given to the casual labourers who were in employment as on the date of commencement of the scheme and it can not be treated as an ongoing scheme".

Against the said judgment, the respondents herein preferred S.L.P. No. 13054 of 2005 and the matter is pending before the Supreme Court.

Even assuming that the decision applies to the facts to the present case, it has to be established by the petitioners that as on the date of commencement of the scheme, they were engaged by the respondents. As per the scheme, part time casual labourer who worked with the respondents as on 01.08.1998 and who completed

240 days of service preceding to 01.08.1998, are entitled to be included in the scheme for grant of temporary status. The respondents issued the proceedings dated 29.06.2004, which is impugned in this Writ Petition, wherein it is stated that the service of first petitioner was terminated on 01.01.1998 and as per the orders of the Tribunal in O.A. No.471 of 1998 dated 10.08.1998, the petitioner was re-engaged as per the proceedings dated 29.04.1999. The impugned proceedings also indicated that as per order of the Department of Telecom dated 25.08.2000, only those part time casual labourers who were engaged by the department directly are eligible for grant of conversion into full time casual labourer. As per the instructions, he should have been in engagement of the Department of Telecom or B.S.N.L. for conversion into full time casual labourer or subsequent regularisation. At present, there is no scheme in the Department of Telecom or B.S.N.L. for conversion of contract labourers into full time casual labourers. If the petitioners are entitled for the scheme floated by the respondent in the year 1998, or in the year 2000, they must satisfy that they were part time labourers directly engaged by the department as on 01.08.1998 and completed 240 days in a preceding year. In the impugned proceedings, it is clearly stated that the first petitioner's services were terminated on 01.01.1998. Therefore, the first petitioner was not on rolls with the department as on that cut off date. So also, no material is filed by the other petitioners to show that they were on rolls with the respondents as on 01.01.1998 and they have been working for more than 240 days preceding that date.

The learned counsel for the petitioner placed reliance on the proceedings of the respondents dated 26.04.1999 whereunder all the petitioners were reengaged. The proceedings read as follows:

> "In accordance with the directions of the Hon'ble CAT-HD proclaimed in OA No.471/98 on 10.8.98, the Telecom District Manager, Cuddapah is pleased to order for continuation of engagement of the following casual labourers with immediate effect in their respective stations under the terms and conditions

laid down earlier, until final decision by Court of Law. All SDOs/SDEs are requested to please utilize the services as shown below and report compliance immediately."

The names of the petitioners were shown in the table.

The learned counsel for the petitioners contended that the word "continuous engagement" means that the petitioners were already continuing in their services. This Court is unable to accept the same because the entire letter would indicate that they would be reengaged with immediate effect and the concerned officials are requested to utilize their services. Therefore, if the petitioners were already in service, question of issuance of these proceedings does not arise.

Further, the Assistant General Manager, B.S.N.L., vide his letter dated 07.02.2002, furnished the service particulars of contract labourers in Cuddapah SSA to the Assistant Director(Staff-II), o/o. C.G.M.-Telecom, Hyderabad. As seen from the proceedings, it is stated in the remarks column that the petitioners were removed from 01.01.1998 and as per the orders of the Central Administrative Tribunal, Hyderabad they were reengaged by its office letter dated 05.07.1999 and from then, they were working on contract basis. It is also contended by the learned counsel for the respondents that the petitioners are not covered by the scheme formulated in letter no.269-10/89, STN dated 07.11.1989. Therefore, when the petitioners were not working as casual labourers as on the cut off date, question of conferring temporary status to them does not arise.

In view of the above, the impugned proceedings do not suffer from any infirmities nor the contents of the impugned proceedings are contrary to the statutory rules or the scheme. The Writ Petition is devoid of merits.

The Writ Petition is, accordingly, dismissed. No costs.

(K.C.Bhanu, J.)

.08.2005

DRK